

## **COOPERATIVE AGREEMENT FOR THE JOINT MARINERS LIBRARY PROJECT**

THIS COOPERATIVE AGREEMENT ("Agreement"), made and entered into this \_\_\_\_\_, 2002, by and between the CITY OF NEWPORT BEACH ("City") and the NEWPORT-MESA UNIFIED SCHOOL DISTRICT ("District") is based on following:

### **RECITALS**

**WHEREAS**, City owns approximately 7.36 acres of property on the corner of Irvine Avenue and Dover Drive ("City Property"). Located on City Property is Mariners Park and an approximately 9,298 square foot public library (Mariners Library). District owns approximately 9.87 acres of property adjoining City Property where it operates the Mariners Elementary School, grades K through 6<sup>th</sup> ("Mariners School").

**WHEREAS**, District and City are each actively interested in grant opportunities offered by the Library Bond Act, Education Code Section 19985 through 20011.

**WHEREAS**, City and District have proposed filing a joint application for "first priority" funding under the Library Bond Act Regulations, Titles 24 CCR, Chapter 16, Article 5.1 through 5.5 and Title 5 CCR, Division 2, Chapter 3, Sections 204, 302, 20444 ("Regulations").

**WHEREAS**, first priority funding is available for joint use projects with a co-located library that houses a combined public library and public school library in a single facility. City and District intend to apply for first priority funding to expand and relocate the Mariners Library to also serve Mariners School.

**WHEREAS**, 30th Street Architects has been hired to prepare plans for a joint use library that complies with Field Act requirements. City and District staffs have designed the facility to provide direct access to Mariner's School and maximize security and safety for the students and children that will use the Library. The design will provide security to students during school hours to accommodate District obligations under the Education Code.

**WHEREAS**, the Regulations require a Cooperative Agreement for joint City and District use of the Mariners Library. The Parties have engaged in discussions regarding funding requirements and have each made commitments to fund respective ongoing operation costs.

**WHEREAS**, the Parties have reviewed and considered the provisions of the City Charter and State law related to the exercise of land use jurisdiction over publicly owned property and have determined that City and District are authorized to enter into this Agreement and to exchange property to accomplish the proposed library expansion and co-located project. The cooperative nature of this project supports City issuance of appropriate permits and processing of required environmental and land use approvals.

**WHEREAS**, this Agreement is intended to memorialize the commitments of the Parties and serves as a vehicle for monitoring the steps necessarily to complete the application and ongoing operation and joint use of Mariners Library.

**WHEREAS**, the Parties are authorized to enter into the Agreement pursuant to the provisions of Education Code Section 10900 et. seq., and Government Code Section 6500, et. seq..

**WHEREAS**, the Agreement is entered into consistent with the Library Bond Act and the Regulations.

### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the above recitals and of the mutual covenants and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

#### **1. MARINERS LIBRARY PROJECT.**

The Parties agree that the Mariners Library will consist of facilities and improvements and offer the activities and opportunities specified in this Section:

##### **1.1 Structure:**

The Mariners Library will serve both as the Mariners Branch Library and the school library for the Mariners Elementary School. It will be a 15,125 square feet one story library building housing a children's room, reference desk, circulation room, public restrooms and a public meeting room. The Children's Room will be approximately 3,700 square feet and will include two single occupant unisex restrooms, and a children's activities room that serves the children of the surrounding Mariners Community. A separate "School Entrance" will provide Mariner's School students direct access to the Children's Room during the hours that school is in session. The Children's Room shall be designed so that a portion of the room can be accessible only through the School Entrance during school hours as provided in section 3.2 of this agreement. A separate teen corner will be included in the main section of the library.

##### **1.2 Improvements:**

Onsite improvements shall include a parking area with fifty (50) spaces and landscaping.

### 1.3 Functions and Activities:

The Mariners Library shall perform the functions and offer the activities specified in Section 2.

## 2. **DEFINITION OF ROLES AND RESPONSIBILITIES.**

2.1 Establishment of Authority — The Mariners Library will remain a City public library under the administrative control of the Board of Library Trustees, as defined in Section 708 of the City Charter:

### 2.2. Free Public Library Service

Mariners Library shall be forever free to the inhabitants and non-resident taxpayers of City, subject always to such rules, regulations, and bylaws as may be made by the Board of Library Trustees. Any person who violates any rule, regulations, or bylaw may be fined or excluded from the privileges of the library. [Education Code section 18960.]

### 2.3 Establishment of control of expenditures

The City Council/Board of Library Trustees has exclusive control of all expenditures of all moneys collected, donated, or appropriated for the library as well as exclusive charge, control and custody of the building.

### 2.4 Staffing

The Mariners Library shall provide staff necessary to perform the public library mission of the combined library.

The District shall employ a school library media technician to perform the mission of the school library in the Children's Room during school hours. The District shall be responsible for salaries and staff benefits of the Library Media Technician and all other District/Mariners School personnel.

City shall be responsible for salaries and staff benefits of all Library personnel employed by City.

The Mariners Library Branch Manager shall provide overall supervision of the library.

Each of the Parties shall provide each other with the names and telephone numbers of personnel that are responsible for the day-to-day operations at

the joint services to be provided under this Agreement. The list shall be updated as needed based on personnel changes.

City and District shall comply with the requirements of State law with respect to the fingerprinting of personnel and volunteers that may have contact with children. All City and District employees are required to be fingerprinted and clear criminal background check requirements prior to employment with the City.

## 2.5 Joint Advisory Committee

A School Library Advisory Committee, comprised of three representatives each from the District and the Library, will be appointed by the respective agencies; will meet regularly, a minimum of three times during the school year, to review the library service plan, collection development, functional and library procedural matters, and other library administrative issues of joint concern.

## 2.6 The Library Collection

Library staff will be responsible for selection of all materials appropriate to meet the public library mission of the combined library.

Library staff and the Mariners School faculty will jointly be responsible for the selection of all materials relevant to meet the Mariners School library needs, working through the School Library Advisory Committee.

The Mariners School Library Collection will be integrated with the Mariners Library Collection. ("Joint Collection"). The identification of District ownership of the Mariners School Library collection will continue including new materials purchased annually by the District funds.

The Joint Collection will be part of the circulation and online catalog system of the Newport Beach Public Library system. The specific District requirements for materials supporting the Mariners School curriculum will be honored.

The City library staff, with assistance of the School Library Advisory Committee, will regularly review the children's collection and deselect materials no longer relevant for the collection or the school curriculum.

## 2.7 Ownership of Assets

Ownership of all public library materials, equipment and furnishings shall be retained by City and identified as such.

The Mariners School Library collection shall be retained by District.

All library materials, equipment, and furnishings shall be available for use by the public, the students, and school personnel.

In the event of termination of the agreement at the end of the 20-year period, library materials originating from the District or purchased by District during the 20-year period will be returned to the District.

Library materials deselected and withdrawn from the collection will be discarded according to the policies of the respective agency, identified as the owner of the materials.

## 2.8 Library Construction Process

As available, City shall forward to District the development plans and construction schedule for the Mariners Library. District may give comments to City regarding the impact of the plans and schedule on the Mariners School community. District and City shall cooperate in implementing the final plans and schedule.

## 3. JOINT LIBRARY SERVICES.

- 3.1 The Mariners Library shall be the cultural, educational and informational heart of the Mariners Community, providing a variety of exceptional services for all ages, supported by state-of-the-art technology. It will be dedicated to serving both as a public library for the community and the school library for the students from kindergarten through sixth grade enrolled at the Mariners School.

The Mariners Library, through the efforts of the City library staff, the Mariners School staff and the guidance of the School Library Advisory Committee, will provide enhanced services, including state of the art technology and access to online resources in support of the school curriculum and for personal enjoyment and use of the student population. All access to online resources in the Children's Room shall be filtered.

The system of reserves shall be established for materials supporting Mariners School, as needed, to assure that sufficient materials are available to support the needs of the school and special school projects.

Students will be able to check-out materials in the Children's Room as they return to their classrooms. A unique *Mariners Library Card* will be issued for each Mariners student for use of the library during school hours; and to facilitate the self check-out by individual students.

### 3.2. Library Service Hours

The library will be open 66 hours each week during the school year.

Monday – Thursday	9am – 9pm
Friday	9am – 6pm
Saturday	9am – 6pm
Sunday	Closed
Total	66 hours/week

Beginning each school year the School Library Advisory Committee will meet to discuss the school schedule for the upcoming year and shall establish the hours use of the Children’s Room will be secured for Mariner’s School students as provided below..

The Children’s Room shall be designed so that the Mariner’s School students will have secured use of a school library, on those days and during those hours of required student attendance during the school year. Secured use of the Children’s Room shall not exceed 30 hours per week between the hours of 9 a.m. and 3 p.m. (“Secured Use Hours”). The Children’s Room design will prevent access by the general public to a portion of the Children’s Room (approximately 1900 to 2100 square feet) to serve as a school library to accommodate 32 students during Secured Use Hours. All other non-student days and hours of the year including but not limited to, holidays, school breaks, teacher development days, minimum days and summer, the entire Children’s Room shall be open to the public.

However, general public access to the school library portion of the Children’s Room during the Secured Use Hours will be available through the School Entrance after sign-in at the Mariner’s School Administrative Office in compliance with the Mariner’s School’s Visitor Policies and Regulations.

The remaining area of the Children’s Room (1600-1800 square feet) will remain open and accessible to the public from the main library entrance at all times the library is open for pre-school activities and all other general public uses

### 3.3 Staffing and Classification

(a) To be provided by City:

	<b>Classification</b>
1 Branch Librarian II (Full-Time)	1191
1 Children’s Librarian (Full-Time)	1180

1 Reference Librarian (Full-Time)	1180
1 Library Clerk II (Full Time)	1270
1 Library Clerk I (Full-Time)	1260
3 Library Clerk I (Part-Time)	R050

(b) To be provided by District:

	<b>Classification</b>
1 School Library Media Technician	(30/hrs/wk – School year)

### 3.4 Use of Volunteers

The Mariners Community Library will continue to utilize volunteers from the community for general library use and circulation functions and volunteers from the school/parent community for the Children's Room. The current volunteer training and qualifications will be revised with assistance from the Joint Advisory Committee to meet the needs of the Children's Room.

### 3.5 Site Identification

The Mariners Community Library shall be sited on Irvine Boulevard, Newport Beach.

### 3.6 Ownership

The City shall have sole ownership of the site, the facilities, furnishings, equipment, and library materials, with the exception of the materials which are integrated into the collection from the current Mariners School Library and materials purchased annually with the allocation of funds for materials from the District and which shall retain the District identification.

### 3.7 Funding

The Mariners Library shall be funded by the City with assistance from the District. The City's current annual funding for Mariners Branch (FY 2002/03) is \$400,000 plus a proportion of -Citywide branch library operation costs of \$1,800,000.

The District shall be responsible for continued dedicated resources to operate a school library. Those resources include dedicated time of teachers and the school principal to supervise and provide instruction and activities in the Library during classroom or student visits and a Children's Room Library Media Technician. The amount shall include the equivalent of the cost and staff benefits for the District of approximately \$100,000 /per year. The District also agrees to continue funding allocations that become available to Mariners

School from the State collection improvement fund. Collection Improvement funding at Mariner's School has historically averaged \$20,000 per year.

If, during the period of this Agreement, the City as a response to economic conditions reduces the funding for the Mariners Library, the contribution of the District may be reduced by the same proportion.

**4. RESPONSIBILITY OF FACILITY OPERATION.**

The City assumes full responsibility for operation, maintenance and management of the Mariners Library under the administration of the Board of Library Trustees.

The District's Board Policies and Regulations regarding student attendance and release from school and visitors on school campuses during school hours shall apply use of the Children's Room, by students of Mariners School.

**5. REVIEW OF AGREEMENT.**

The term of this Agreement is for 20-years. The agreement will be reviewed each five years by the School Library Advisory Committee. Proposed amendments to the contract shall be approved by both the City Council and District Board of Trustees.

**6. FIELD ACT.**

Parties have agreed the architectural design and construction standards of the Field Act are applicable to this project. As part of the joint program, the Children's Room and the Community Meeting Room will serve as classrooms for the students, and for student groups of 24 or more during school hours.

**7. 20-YEAR COMMITMENT FOR JOINT SERVICE.**

Both the City and the District commit to providing joint use library services in the facility for a period of 20 years under the terms of this Agreement.

**8. 40-YEAR COMMITMENT FOR PUBLIC LIBRARY SERVICE.**

It is acknowledged, as incorporated on Education Code 19999 and section 20440 (e) (3) (G), that the City is to provide public library direct services from this facility for a period of 40 years.

**9. PROJECT APPROVAL CEQA COMPLIANCE.**

The Parties agree that the Joint Mariners Library Project ("Project") will require CEQA compliance and building and grading permits. City has prepared the



necessary environmental and planning documents and permit applications required by and for the Project. City will waive any planning, building or grading permit or plan check fees otherwise required of applicants for similar projects.

**10. INDEMNITY.**

City agrees to indemnify, hold harmless and defend District and their respective officers, officials, employees, representatives, agents and/or volunteers from any legal liability, or damages, for bodily injury, death and /or property damage, reasonable costs and expenses arising out of the negligent acts or omissions of City or its officers, employees, representatives, agents , and/or volunteer's in the performance of City's responsibilities pursuant to this Agreement.

District agrees to indemnify, hold harmless and defend City and City's respective officers, officials, employees, representatives, agents and/or volunteers from any legal liability or damages for bodily injury, death and/or property damage, reasonable costs and expenses arising out of the negligent acts or omissions of District or its officers, employees, representatives and agents in the performance of District's responsibilities pursuant to this Agreement.

**11. COOPERATION.**

The Parties acknowledge and agree to cooperate with one another in the performance of duties pursuant to this Agreement including the prompt execution of documents, and to provide funding and continuous operation of the Project.

**12. PROJECT ADMINISTRATOR NOTICE.**

The Parties have each designated "Project Administrators" to perform the duties required by this agreement, to execute contracts and agreements on behalf of the Parties and to ensure that all aspects of the Project are constructed, administered or implemented in accordance with this Agreement, and the intent of the Parties.

All notices, demands, requests or approvals to City shall be addressed to the Project Administrator as follows:

**CITY**

City Manager's Office  
3300 Newport Boulevard  
Newport Beach, CA, 92658  
(949) 644-3000  
FAX 644-3020  
hbludau@city.newport-beach.ca.us

All notices, demands, requests or approvals to District shall be addressed to the Project Administrator as follows:

**DISTRICT**

Superintendent  
2985 Bear Street #A  
Costa Mesa, CA, 92626  
(714) 424-5030  
FAX 424-5018  
rbarbot@nmusd.k12.ca.us

**13. INSURANCE**

13.1 District and Library shall maintain or be self insured for comprehensive, broad form, general public liability insurance against claims and liabilities for personal injury, death, or property damage, providing protection of at least \$1,000,000 for bodily injury or death to any one person for any one accident or occurrence and at least \$1,000,000 for property damage occurring on their respective property.

13.2 Workers Compensation Insurance

District and City shall maintain Workers' Compensation Insurance for each Party's own personnel as may be required by State law.

13.3 District participates in the Schools Alliance for Worker's Compensation Excess, Self-Funded Joint Powers Authority for workers' compensation excess insurance. The District also participates in the Southern Orange County Property/Liability Self-Insurance Authority for casualty and property insurance. The District shall provide all the insurance required of the District through said programs.

13.4 City is self insured as respects general liability and automobile liability coverage. City has a self insured retention ("SIR") limit of \$500,000 dollars with excess coverage of \$25 million dollars.

City is also self insured as respects workers compensation coverage. City has a SIR of \$300,000 dollars with statutory limits and employers' liability excess coverage of \$1 million dollars.

## **14. MISCELLANEOUS PROVISIONS**

- 14.1 Term of Agreement. This Agreement shall continue in full force and effect with respect to the Property for a period of twenty (20) years from the Effective Date of this Agreement. This Agreement has been approved by the Parties with the understanding that this Agreement will not be effective until City receive notification of award of grant of the requested funding under the Library Bond Act.
- 14.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the Parties, and all oral or written representations, understandings or agreements are expressly stated in this Agreement. No testimony or evidence of any such representations, understandings, or covenants shall be admissible in any proceeding or any kind or nature to interpret or determine the terms or conditions of this Agreement.
- 14.3 Severability. If any term, provision, covenant, or condition of this Agreement is ruled invalid, void, or unenforceable by a court of competent jurisdiction, this Agreement shall nonetheless remain in full force and effect as to all remaining terms, provisions, covenants, and conditions.
- 14.4 Interpretation and Governing Law. This Agreement and any related dispute shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed according to its fair language and common meaning to achieve the objectives and purposes of the Parties. The rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be employed in interpreting this Agreement since all Parties have been represented by counsel.
- 14.5. Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- 14.6 Singular and Plural. As used herein, the singular of any word includes the plural.
- 14.7 Waiver. The failure of a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or the failure of a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of that Party's right to demand and require, at any time, the other Party's strict compliance with the terms of this Agreement.

- 14.8 Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit for the parties and their successors and assigns.
- 14.9 Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement.
- 14.10 Specific Performance. The Parties acknowledge that monetary damages would be inadequate to remedy any breach of this Agreement by either Party. Accordingly, the Parties agree that any breach of this Agreement shall entitle the non-breaching Party to file an action for specific performance in a court of competent jurisdiction. In no event shall either Party be liable for monetary damages in the event of a breach of this Agreement.
- 14.11 Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same affect as if all of the parties had executed the same instrument.
- 14.12 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by any Party for the purpose of enforcing, construing, or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Orange, State of California. The Parties waive all provisions of law providing for the filing, removal or change or venue to any other court.
- 14.13 Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated by this Agreement to achieve the objectives of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record instruments and writing. The Parties shall also take any action as may be reasonably necessary under the terms of this Agreement to carry out the intent and to achieve the objectives of this Agreement.
- 14.14 Amendments in Writing/Cooperation. This Agreement may be amended only by written consent of the parties specifically approving the amendment and in accordance with the Government Code and Educational Code provisions. The Parties shall cooperate in good faith with respect to any amendment proposed in order to clarify that intent and application of this Agreement, and shall treat any such proposal on its own merits, and not as a basis for the introduction of unrelated matters.
- 14.15 Authority to Execute. Any person or persons executing this Agreement on behalf of the City and District warrants and represents that he/she has the

authority to execute this Agreement on behalf of his/her agency and to bind that Agency to the performance of its obligations pursuant to this Agreement.

14.16 Notice. All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and shall be deemed served when delivered personally or on the third business day after deposit in the United States mail, postage prepaid, first class mail, addressed as follows:

14.17 Effective Date. This Agreement shall become effective as of the date City receives notification of award of grant of the requested funding from the California Public Library Construction and Renovation Board.

**IN WITNESS THEREOF, the parties hereto have executed this Agreement on the day and year first set forth above.**

**DISTRICT:**

By: \_\_\_\_\_  
Judy Franco, President  
of the Board of Trustees

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Mike Toy, Legal Counsel for  
Newport-Mesa Unified School District

**CITY:**

By: \_\_\_\_\_  
Tod Ridgeway, Mayor  
for the City of Newport Beach

**ATTEST:**

By: \_\_\_\_\_

LaVonne Harkless, City Clerk  
for the City of Newport Beach

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Robin L. Clauson, Assistant City Attorney  
for the City of Newport Beach

F:\users\cat\shared\da\Ag\JointMarinersLib\CoopAgt\053102clean.doc